

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PATRICK CHAVEZ,
on behalf of himself and all other
City employees who have been paid overtime
that was improperly determined under
29 U.S.C.A. § 207(a)(1) (Section 7(a)(1)
of the Fair Labor Standards Act),

Plaintiff,

v.

Civ. No. 02-562 JH/ACT

CITY OF ALBUQUERQUE,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Plaintiff Patrick Chavez's *Motion To Conditionally Certify As Collective Action And Approve Notice To Be Sent To The Class* [Doc. No. 86] and the *Motion For Conditional Class Certification* [Doc. No. 89] filed by prospective class members Johnny B. Gonzales and Michael Toya. After a review of the parties' briefs and the relevant authorities, the Court finds that Plaintiff's motion should be granted, and Gonzales and Toya's motion should be denied.

Both motions request similar relief: that this Court conditionally certify a class under the Fair Labor Standards Act ("FLSA") such that the Plaintiff may notify potential class members of their right to opt into such a class and thereby join this lawsuit. Defendant City of Albuquerque ("the City") does not oppose the motion by Plaintiff Patrick Chavez or his proposed form of notice, provided that he file an amended complaint that names as additional plaintiffs individuals who the

City feels are more similarly situated to the majority of putative class members than Mr. Chavez. *See* City's Response (Doc. No. 91) at p. 2. In an effort to resolve these issues, Plaintiff filed his amended complaint on December 7, 2004 to name additional class representatives. By letter dated November 19, 2004 and copied to counsel for all parties, counsel for Mr. Chavez advised the Court that the City now does not oppose Mr. Chavez's motion, although counsel for Mr. Gonzales and Mr. Toya (who did not file a written response to the motion) does oppose it.

By contrast, both the City and Mr. Chavez do oppose the motion for certification filed by counsel for Mr. Gonzales and Mr. Toya. In that motion, Gonzales and Toya request that the Court "certify a broad main class *and narrower sub-classes* of similarly situated employees and former employees of the City of Albuquerque" (emphasis added) who have been underpaid in violation of the Fair Labor Standards Act. Gonzales and Toya do not define the proposed sub-classes, saying only that they should be created "by City Department, Division, or work duties and location, as deemed appropriate." Motion at ¶ 46. The scope of the class proposed by Gonzales and Toya is vague and also appears to attempt to incorporate claims not raised in either the original or amended complaint in this case. Finally, Gonzales and Toya have failed to provide the Court with a proposed form of notice to prospective class members. Based upon all the foregoing, Mr. Chavez's motion should be granted and Mr. Gonzales and Mr. Toya's motion should be denied.

IT IS THEREFORE ORDERED that Plaintiff Patrick Chavez's *Motion To Conditionally Certify As Collective Action And Approve Notice To Be Sent To The Class* [Doc. No. 86] is GRANTED and the *Motion For Conditional Class Certification* [Doc. No. 89] filed by prospective class members Johnny B. Gonzales and Michael Toya is DENIED.

UNITED STATES DISTRICT JUDGE